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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re COLIN A. et al., Persons Coming Under the
Juvenile Court Law.

TUOLUMNE COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Plaintiff and Respondent,

v.

JEREMY A.,

Defendant and Appellant.

F071373

(Super. Ct. Nos. JV7494 & JV7495)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tuolumne County. Donald I. Segerstrom, Jr., Judge.

Gino de Solenni, under appointment by the Court of Appeal, for Defendant and Appellant.

Sarah Carrillo, County Counsel, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Franson, J. and Smith, J.

Jeremy A. appeals from the juvenile court's visitation orders issued at the six-month review hearing (Welf. & Inst. Code, § 366.21, subd. (e))¹ as to his nine-year-old son Mason and one-year-old son Colin. Jeremy contends that the order impermissibly delegated to the Tuolumne County Department of Social Services (department) the discretion to determine whether he would have visitation with his sons. We affirm.

PROCEDURAL AND FACTUAL SUMMARY

Jeremy's sole issue on this appeal is whether the juvenile court erred by granting the department absolute discretion to determine whether visitation would occur. A brief summary of the facts thus suffices.

Jeremy and his wife, Michele, are the parents of Mason and Colin. Jeremy and Michele have an extensive child welfare history from Calaveras and Tuolumne Counties, as well as from the state of Oregon, stemming from chronic drug abuse, sexual abuse, and evading the department.

These dependency proceedings were initiated in June 2014 when the department received a report alleging Michele and Jeremy were using methamphetamine while caring for then seven-year-old Mason and two-month-old Colin. Michele and Jeremy were uncooperative so the department took the children into protective custody and placed them in foster care.

In September 2014, the juvenile court exercised its dependency jurisdiction over the children and ordered reunification services for both parents. The court also ordered the department to provide them weekly supervised visits and set the six-month review hearing for March 2015.

Jeremy struggled to comply with the drug-related components of his services plan. He tested positive for methamphetamine, forged signatures on his 12-step cards and

¹ All statutory references are to the Welfare and Institutions Code.

voluntarily left two residential drug treatment programs. However, he and Michele regularly visited the children and the children were happy to see them.

In its report for the six-month review hearing, the department recommended the juvenile court terminate Jeremy's reunification services but continue services for Michele. By that time, the children had been placed with their paternal grandmother and Jeremy and Michele were having separate visits with them.

The department attached a proposed visitation schedule to its report and described the conditions, including that "Visitation will be increased or decreased at the discretion of the social worker, in the best interest of the children, and dependent on the parents' progress with this case plan." The department also completed and attached "Findings and Orders After Six-Month Prepermanency Hearing" (JV-430) and "Visitation Attachment" (JV-400). The department checked the box on the JV-430, proposing the juvenile court order visitation as stated in the JV-400. The department set forth the specifics of its proposed visitation plan on the JV-400 by selecting one monthly one-hour supervised visit for Jeremy to be conducted at a departmental facility or a public place approved by the social worker.

Jeremy appeared at the six-month review hearing with his attorney who acknowledged receiving a copy of the department's report. Jeremy's attorney did not object to the proposed visitation order. His attorney informed the court that Jeremy was going to live and work out of state and submitted on the recommendation to terminate his reunification services. The juvenile court adopted the department's findings and orders as set forth in its report and set a 12-month review hearing.

The juvenile court's visitation order is derived from three documents, each incorporating the next by reference to its JV number: the minute order for the six-month review hearing, the JV-430 and the JV-400. The juvenile court indicated in the minute order that the department would have discretion over visitation. It did so by filling in the block associated with the statement, "Visitation shall be at the discretion of the Social

Worker.” The court signed the JV-430, which indicates that visitation is ordered as set forth in the JV-400. The JV-400 sets forth the conditions proposed by the department in the JV-400 attached to its report.

This appeal ensued.

DISCUSSION

Jeremy contends the juvenile court impermissibly delegated its discretion over visitation to the department when it ordered “that visitation would occur at the discretion of the social worker, and that it could be increased or decreased at the social worker’s discretion.” He argues the department could decrease visitation to the point where it did not occur at all under those terms. We disagree.

The power to determine the right and extent of visitation is a judicial function and must be made by the juvenile court. The court may, however, delegate to the social worker the responsibility to manage the details of visitation, including the time, place and manner. “‘Such matters as time, place and manner of visitation do not affect the defined right of a parent to see his or her child and thus do not infringe upon the judicial function.’ [Citation.] Only when a visitation order delegates to the ... county welfare department the absolute discretion to determine whether any visitation occurs does the order violate the statutory scheme and separation of powers doctrine. [Citations.]” (*In re Moriah T.* (1994) 23 Cal.App.4th 1367, 1373-1374.)

Here, the juvenile court granted the social worker discretion to manage the details of visitation which were set forth in the visitation attachment: Jeremy was to have supervised visitation with his sons once a month for an hour at a location approved by the social worker. Thus, the court’s visitation order specified the frequency, duration and location of Jeremy’s visits and granted the social worker discretion to determine what time and when the visits would occur.

Contrary to Jeremy’s assertion, the juvenile court did *not* grant the social worker discretion to increase or decrease visitation. That language, though used by the

department to describe the proposed visitation schedule, was not incorporated into the visitation order.

We conclude the juvenile court did not impermissibly delegate absolute discretion over visitation to the social worker.

DISPOSITION

The March 3, 2015 visitation orders are affirmed.